

Claim 1, add in as lines 13 - 15:

- - reducing scrap by determining said first fabrication parties unused blank material and making that remaining unused blank material available to said second user parties for fabricating said second user parties product needs - -.

Claim 4, add in as lines 3 and 4:

- - fabricating said first fabricators needs and said second used parties needs in one continuous operation - -.

Claim 6, add in as line 6:

- - fabricating said first fabricators needs and said second user parties needs simultaneously - -.

Claim 15, add in as line 2:

- - fabricating said first fabricators needs and said second user parties needs simultaneously - -.

Claim 16, add in as lines 7 and 8:

- - fabricating said first fabricators needs and said second used parties needs in one continuous operation - -.

Add in new claims 18-20 as follows:

18. A scrap reduction procedure as in claim 1 including:

fabricating the needs of said second user party from unused blank space available while fabricating the needs of said first fabricating party.

19. A scrap reduction procedure as in claim 1 including:

programming into a sheet cutting machine the needs of both said first fabricating party and said second user party for concurrent fabrication of the needs of both said first fabricating party and said second user party.

20. A scrap reduction procedure as in claim 1 including:

providing a website with three databases, one first database for fabrication space information available on blanks of said first fabricator, one second database for fabrication space information requirements for second users and one third database for comparing the information contained in said first database with information contained in said second database.

REMARKS

This is a response to the rejection and remarks made by the Examiner in the non-final rejection of Claims 1 - 17 dated 11/15/2005.

Examiner's Note

It is first noted that there is inconsistency between the rejections made in the final rejections of 12/23/2004 and those rejections made in the non-final rejection of 11/15/2005, even though the exact same claims were being considered and even though the exact same prior art was applied.

The Examiner has admitted in the Office Action of 2/23/2004, page 3, first full paragraph, that "Stewart does not, however, specifically mention that the method is specifically used for scrap reductions." That rejection relied on a personal opinion of prudence since scrapping essentially would be a waste. The Board of Appeals (sentence sharing pages 3 and 4 of their Decision dated Oct 18, 2005) stated "the functional basis proffered to support the rejection is fatally flawed due to the failure to substantiate the Official Notice disputed. Since a 35 USC 102 rejection showing is more stringent or demanding than that of a 35 USC 103 rejection, it is difficult to understand how the patent to Stewart has now become more pertinent and revealing than it was previously.

An appropriate rejection under 35 USC 102 requires that the disclosure or prior patents be read unaided by teachings of the subject matter which they are alleged to anticipate. Technical Tape corp. v. Minnesota Mining and Mfg. Co., 110 USPQ 160 (D.C.S.D. NY 1957). There can be no 35 USC 102 anticipation unless all of the same elements are found in exactly the same situation and united in the same way to perform identical functions as a single prior art reference. Corometrics Medical Systems v. Berkeley Bio-Engineering, 193 USPQ 467 (D.C.N.D. Calif.

1977); Johnson & Johnson v. Gore & W.L. Gore & Assoc., 195 USPQ 487 (D.C. Del. 1978); Scott v. Inflatable System, 222 USPQ 460 (9th Cir. 1983). The present rejections do not do this.

It is requested that the Examiner explain how an admitted and adjudicated flaw in the rejection is now not a flaw but actually more pertinent than it was before it was held to be flawed.

35 USC 112, Sixth Paragraph

The means - plus function language meaning environment is clear. A website is used to communicate between manufacturers and users so that items and parts may be manufactured cooperatively to reduce scrap.

35 USC 102 (e) Rejection

Claims 1-17 are rejected under 35 USC 102(e) as being anticipated by Stewart, page 3 of the Office Action mailed 11/15/2005.

The Examiner now states that “Stewart discloses all the elements of the instant invention except as follows: Stewart teaches the sale of materials through an intermediary to a buyer (see

summary and drawing), where the seller may also be the manufacturer of secondary fabricated parts (page 1, para. 0009) through a negotiation means for negotiation of desired products (page 6, para 0082). This again appears to admittedly preclude a valid 35 USC 102 rejection.

The rejection of claims 1-17 is also seen to be inappropriate for the same reasons set forth in the Appeal Brief filed January 24, 2005 under Arguments on pages 3-13. These arguments are incorporated here by reference.

Preamble

The Examiner has spent 4 pages addressing the preamble, most of which is either irrelevant or supports your applicants position. The function of the preamble was most recently addressed by the CAFC in the case of Pitney Bowes v. Hewlett Packard, 51 USPQ 2d (CAFC 1999), where the Federal Circuit stated: a court charged with claim construction must construe the preamble and the remainder of the claim as one unified and internally consistent recitation of the claimed invention, when the preamble is not merely a statement describing the invention's intended field of use but instead is intimately meshed with the ensuing language in the claim. The first appearance of terms in the claim body in this case could only be understood or discerned in the context of the preamble's use of those terms.